

HOUSE BILL NO. 211

INTRODUCED BY J. WELBORN, BLASDEL, GEBHARDT, KEANE, MENAHAN, WILSON

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A VOLUNTARY CERTIFIED RESPONSIBLE ~~VENDOR~~ LICENSEE PROGRAM THAT ALLOWS RETAIL LICENSEES ENGAGED IN THE SALE OF ALCOHOLIC BEVERAGES TO SEND THEIR EMPLOYEES TO QUALIFIED TRAINING CLASSES DEALING WITH THE SALE OF ALCOHOLIC BEVERAGES; PROVIDING THAT CERTIFIED RESPONSIBLE ~~VENDORS~~ LICENSEES ARE ENTITLED TO A ~~DEFENSE~~ PROTECTION AGAINST LICENSE REVOCATION OR SUSPENSION AND MITIGATION OF ADMINISTRATIVE PENALTIES OR FINES FOR AN EMPLOYEE'S ILLEGAL SALE OF AN ALCOHOLIC BEVERAGE TO A PERSON UNDER 21 YEARS OF AGE; PROVIDING FOR REVOCATION OF A CERTIFICATION FOR EXCESSIVE VIOLATIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-3-301 AND 16-6-314, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 7] may be cited as the "Montana Responsible ~~Vendor~~ LICENSEE Act".

NEW SECTION. Section 2. Legislative intent. It is the intent of the legislature to:

- (1) reduce the sale of alcoholic beverages to and consumption of alcoholic beverages by persons under 21 years of age;
- (2) promote an attitude of professionalism and responsibility on the part of ~~vendors~~ LICENSEES who sell or serve alcoholic beverages that is expressed in a commitment to responsible service; and
- (3) encourage alcoholic beverage ~~vendors~~ LICENSEES to implement responsible policies for selling and serving alcoholic beverages and, as a consequence, restrict the sanctions that may be imposed against those ~~vendors~~ LICENSEES who comply with responsible practices in accordance with [sections 1 through 7].

NEW SECTION. Section 3. ~~Vendor~~ LICENSEE -- definition. As used in [sections 1 through 7], "~~vendor~~" "LICENSEE" means a person or entity licensed by the department to sell alcoholic beverages at retail for either on-premises or off-premises consumption.

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2 **NEW SECTION. Section 4. Establishment of program.** The department shall establish a voluntary
3 responsible ~~vendor~~ LICENSEE program designed to encourage ~~vendors~~ LICENSEES and their employees and
4 customers to treat alcoholic beverages in a responsible manner. As part of establishing this program, the
5 department shall review training classes and provide approval of the classes that are offered. If the employees
6 of a ~~vendor~~ LICENSEE complete department-approved classes, the ~~vendor~~ LICENSEE may be certified as a
7 responsible ~~vendor~~ LICENSEE. The training classes must include comprehensive instruction on preventing the sale
8 of alcoholic beverages to persons under 21 years of age.

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10 **NEW SECTION. Section 5. Requirements for certification.** In order to qualify for certification, the
11 ~~vendor~~ LICENSEE shall:

12 (1) require each employee who is authorized to sell alcoholic beverages in the normal course of
13 employment to attend a qualified training class within 30 days of commencing employment. The qualified training
14 class must include subjects dealing with alcoholic beverages as follows:

15 (a) laws regarding the sale of alcoholic beverages for on-premises consumption or for off-premises
16 consumption;

17 (b) methods of recognizing and dealing with customers under 21 years of age; and

18 (c) the development of specific procedures for:

19 (i) refusing to sell alcoholic beverages to persons who are under 21 years of age; and

20 (ii) assisting employees in dealing with customers under 21 years of age.

21 (2) require all trained employees to attend additional qualified classes on an annual basis. The classes
22 must include the dissemination of existing and new information covering the subjects specified in this section.

23 (3) maintain employment records concerning the training of its employees as required by this section;
24 and

25 (4) post signs on the ~~vendor's~~ LICENSEE'S premises informing customers of the ~~vendor's~~ LICENSEE'S policy
26 against selling alcoholic beverages to persons under 21 years of age.

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28 **NEW SECTION. Section 6. Certification -- renewal -- revocation -- rulemaking.** (1) A ~~vendor~~
29 LICENSEE who seeks certification as a responsible ~~vendor~~ LICENSEE shall provide the department with evidence
30 of compliance with the requirements of [section 5]. Upon satisfactory proof that the ~~vendor~~ LICENSEE has complied

with the requirements of [section 5], the department shall certify the ~~vendor~~ LICENSEE as a responsible ~~vendor~~ LICENSEE. Certification must be renewed annually, ~~and the certification may be revoked for noncompliance with [section 5].~~

(2) (A) A CERTIFICATION MAY BE REVOKED FOR NONCOMPLIANCE WITH [SECTION 5]. A CERTIFICATION MUST BE REVOKED IF A ~~VENDOR~~ LICENSEE IS DETERMINED BY THE DEPARTMENT TO BE GUILTY OF EXCESSIVE VIOLATIONS OF 16-3-301 WITH RESPECT TO THE ~~VENDOR'S~~ LICENSEE'S OR THE ~~VENDOR'S~~ LICENSEE'S EMPLOYEES SELLING, DELIVERING, OR GIVING ALCOHOLIC BEVERAGES TO UNDERAGE PERSONS.

(B) FOR THE PURPOSES OF THIS SUBSECTION (2), "EXCESSIVE VIOLATIONS" MEANS MORE THAN FOUR VIOLATIONS DESCRIBED IN SUBSECTION (2)(A) IN A 3-YEAR PERIOD.

~~(2)(3)~~ The department may adopt rules to implement [sections 1 through 7].

NEW SECTION. Section 7. Certification as ~~defense~~ PROTECTION against license revocation or suspension -- mitigation of penalties and fines. (1) The license of a certified responsible ~~vendor~~ LICENSEE under Title 16, chapters 1 through 4 and 6, may not be suspended or revoked based upon an employee's illegal sale of an alcoholic beverage to a person who is under 21 years of age if the employee completed the training prescribed by [section 5] before committing the violation.

(2) The department shall consider enrollment in the certified responsible ~~vendor~~ LICENSEE program as a mitigating factor in determining administrative penalties and fines for an employee's illegal sale of an alcoholic beverage to a person who is under 21 years of age.

Section 8. Section 16-3-301, MCA, is amended to read:

"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age. (1) It is unlawful for a licensed retailer to purchase or acquire beer or wine from anyone except a brewery, winery, or wholesaler licensed under the provisions of this code.

(2) It is unlawful for a licensed retailer to transport beer or wine from one licensed premises or other facility to any other licensed premises owned by the licensee.

(3) It is unlawful for a licensed wholesaler to purchase beer or wine from anyone except a brewery, winery, or wholesaler licensed or registered under this code.

(4) (a) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

1 ~~(a)~~(i) any person under 21 years of age; or

2 ~~(b)~~(ii) any person actually, apparently, or obviously intoxicated.

3 (b) Certified responsible vendors LICENSEES under [sections 1 through 7] are entitled to the defense
4 PROTECTION and mitigating factor consideration provided in [section 7].

5 (5) Any person under 21 years of age or any other person who knowingly misrepresents the person's
6 qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with the
7 licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section
8 may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any
9 federal law.

10 (6) All licensees must display in a prominent place in their premises a placard, issued by the department,
11 stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

12 (7) For purposes of 45-5-623 and this title, the establishment of the following facts by a person making
13 a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and
14 a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

15 (a) (i) the purchaser falsely represented and supported with documentary evidence that an ordinary and
16 prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

17 ~~(b)~~(ii) the appearance of the purchaser was such that an ordinary and prudent person would believe the
18 purchaser to be of legal age to purchase alcoholic beverages; and

19 ~~(c)~~(iii) the sale was made in good faith and in reasonable reliance upon the representation and
20 appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages; or

21 (b) the sale was made by a certified responsible vendor LICENSEE as provided in [sections 1 through 7].

22 (See compiler's comments for contingent termination of certain text.)"

23
24 **Section 9.** Section 16-6-314, MCA, is amended to read:

25 **"16-6-314. Penalty for violating code -- revocation of license -- penalty for violation by underage**
26 **person.** (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in
27 46-18-212, except as otherwise provided in this section.

28 (2) (a) If Subject to subsection (2)(b), if a retail licensee is convicted of an offense under this code, the
29 licensee's license must be immediately revoked or, in the discretion of the department, another sanction must
30 be imposed as provided under 16-4-406.

(b) A certified responsible vendor LICENSEE, as provided in [sections 1 through 7], is entitled to the defense PROTECTION provided in [section 7].

(3) A person under 21 years of age who violates 16-3-301(5) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2) or (3). (See compiler's comments for contingent termination of certain text.)"

NEW SECTION. SECTION 10. No APPROPRIATION. IT IS THE INTENT OF THE LEGISLATURE THAT THE REQUIREMENTS OF [THIS ACT] BE CONDUCTED WITHIN EXISTING LEVELS OF FUNDING.

NEW SECTION. **Section 11. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 16, chapter 3, and the provisions of Title 16, chapter 3, apply to [sections 1 through 7].

NEW SECTION. **Section 12. Effective date.** [This act] is effective July 1, 2009.

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